IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

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Deep Chand Vs. State

S.B. CRIMINAL MISC.2nd BAIL APPLICATION NO.5063/2006 under Section 439 Cr.P.C.

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Date of Order:- 29/8/2006.

P R E S E N T
HON'BLE MR.JUSTICE HARBANS LAL

Mr. Rohan Jain for the accused-petitioner.
Mr. Bhuvnesh Sharma for Central Bureau of Narcotics.

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BY THE COURT:-

This second bail application under Section 439 Cr.P.C. has been filed on behalf of petitioner Deepchand whose first bail application was rejected on 21/9/2004 in FIR No.3/2003 PS Narcotics, District Kota for offences under Sections 8/18 and 8/29 of the N.D.P.S. Act, 1985.

2) Learned counsel for the petitioner has mainly sought his release on bail on the ground of principle of parity. He has submitted that co-accused Ramkaran has since been enlarged on bail by the Special Judge, NDPS Act Cases-cum-Additional District and Sessions Judge No.2, Kota vide his order dated 28/6/2006 and the case of the present petitioner is not in any graver than his case.

3) Learned Public Prosecutor has opposed the bail application. He has submitted that co-accused Ramkaran has been wrongly granted the indulgence of bail by the learned court below despite the fact that there is ample evidence against him for his active involvement in the alleged offences. He has, therefore, submitted that the petitioner cannot be enlarged on bail simply because another accused has been wrongly released on bail.

4) I have considered the respective submissions and have gone through the entire papers placed before me.

5) As per the prosecution case Preventive Team of the Narcotics Bureau Kota intercepted a Maruti car on 27/9/2003 at 1300 hours near Anantpura Petrol Pump and seized 12 kg. of contraband opium and 40 gms. of Heroin in 11 small packets and arrested Ashok Kumar and Jaswant Singh who were traveling in the car. During the course of investigation, it was found that Srichand, who was the owner of the said car having purchased it from one Harnam Singh, had sent Ashok Kumar and Jawant Singh to Jhalawar to fetch the aforesaid contraband articles which he had purchased through co-accused Ramkaran by a deal on telephone and who had prior to this also purchased the contraband articles from the area for him. The further case of the prosecution is that Ramkaran who happened to be the brother-in-

law of the petitioner had handed over a bag to the petitioner to keep it safely saying that he would return to collect the said bag either on the same day or the next day. On his asking as to what was in the bag, Ramkaran told Deepchand, the petitioner that it contained the opium. So, he kept the bag in the Soyabean field of Bajrang Lal which is situated at the back of the Dhaba owned by Deepchand. Co-accused Ramkaran promised to pay Rs.1000/- to him for this job. Co-accused Ramkaran accompanied by Satya Narain, Ashok Kumar and Jaswant Singh came to his dhaba on the night intervening 26/9/2003 and 27/9/2003 and after taking the bag from Deepchand concealed the opium in the secret chamber made in the left mudguard of the Maruti car. Then, Ashok Kumar and Jawant Singh started from there at 5.00 a.m. but were intercepted and caught as indicated above.

6) Having carefully considered the respective submissions made at the bar and upon a thorough perusal of the materials placed before me, it does not appear to be a case of false implication of petitioner Deepchand. He has not only kept the bag containing contraband opium in his possession knowing it to be opium prior to its handing over back to co-accused Ramkaran but has also received Rs.1000/- for keeping it. It is true that co-accused Ramkaran has been wrongly released on bail by the learned court below vide its order dated 28/6/2006

inspite of there being overwhelming material showing his active involvement in the alleged offences. Not only this, co-accused Ramkaran has been found to be actively involved in these activities prior to this incident.

7) The learned Special Judge has not mentioned in the order that there are no reasonable ground that accused Ramkaran has committed the alleged offence and he would not indulge in similar offences after his release on bail which was a condition precedent for releasing him on bail. The order of the learned court below granting him bail therefore, does not appear to be proper and just and smacks of dishonesty for which separate probe is required to be made on the administrative side.

Consequently, this bail application under Section 439 Cr.P.C. is hereby dismissed and it is directed that a copy of the order be placed before the Hon’ble Chief Justice for such action as may be deemed proper in the facts and circumstances of the case.

(HARBANS LAL), J.

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